IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.M.JAMES

THURSDAY, THE 29TH MARCH 2007 / 8TH CHAITHRA 1929

CRL.A.No. 83 of 2002()

SC.111/2001 of SESSIONS COURT, ERNAKULAM

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APPELLANT: ACCUSED

STANLEY @ ALEXANDER, S/O. XAVIER,
MANEKKADU VEEDU, MAHATMA ROAD,
PONEKKARA BHAGAM, EDAPPALLY NORTH VILLAGE,
COCHIN.

BY ADV. SRI.PEEYUS A.KOTTAM
SRI.ASHIK K.MOHAMMED ALI

RESPONDENTS: COMPLAINANT

STATE OF KERALA,
REPRESENTED BY THE ASST. POLICE COMMISSIONER,
THRIKKAKARA, REPRESENTED BY THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA.

BY PUBLIC PROSECUTOR, SRI THOMAS JOHN AMBOOKEN

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 29/03/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

J.M.JAMES, J.

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Crl.A.No. 83 of 2002 (A)

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Dated this the 29th day of March, 2007

J U D G M E N T

The accused in Sessions Case No.111/2001 on the file of Sessions Court, Ernakulam, is the appellant. He was found guilty of the offence punishable under Sections 448 and 354 of the Indian Penal Code as well as under Sections 3(1)(xi) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, in short the Act. Therefore, convicted and sentenced him, to undergo simple imprisonment for one month under Section 448 I.P.C. Simple imprisonment for a period of six months and also to pay a fine of Rs.5,000/- under Section 3(1)(xi) of the Act. No separate sentence was imposed under Section 354 I.P.C. In view of the sentence imposed under Section 3(1)(xi) of the Act, the said conviction and sentence are under challenge through this appeal.

2. The brief facts of this case, required for the disposal of the appeal, are that, PW.1, a woman, aged about 20 years and who studied upto Std.X, is the wife of PW.5, a carpenter by profession. The latter was working under the appellant, who is also a carpenter. Both PW.5 and the appellant were doing the

work for a person, by name Ravi, a contractor. There was a working shed near the house of Ravi. It is alleged that the appellant trespassed into the house of PW.1, demanding insulation tape, when PW.1 was alone in the house and, whileso, caught on her hand and closed her mouth when she tried to make an alarm. She pushed him away. He then left the place. When PW.5 returned from the work place PW.1 complained about the incident and both of them went to the house of the appellant who was resting after his lunch. All the three, on the request of the appellant, came to the house of Ravi, the contractor. But he was away from his house. PW.2, his wife was present. PW.5 asked the appellant, why he caught on the hand of his wife. Thereafter, after a brief talk, PWs.1 and 5, went back to their house.

3. The parents of PW.5 had gone out at the time of the occurrence. They returned in the evening. They discussed each other and as the appellant did not ask any excuses for his misdeed, PW.5 went and gave complaint before PW.7, the Sub Inspector of Police, Kalamassery Police Station. On recording Exhibit P1, First Information Statement of PW.1, PW.7 registered Exhibit P1(a), First Information Report, under Sections 448 I.P.C

and 3(1)(xi) of the Act. PW.8, the Assistant Commissioner of Police conducted the investigation. PW.8 questioned the witnesses, completed the investigation and filed the final report.

4. To prove the offence under Section 3(1)(xi) of the Act, there should be a use of force or an assault on a woman, belonging to a scheduled caste, with an intention to dishonour her, or outrage her modesty. PW.3, the Tahsildar of Kanayannur Taluk, issued Exhibit P2 caste certificate, certifying that PW.1 belongs to pulaya community, which is included under the scheduled caste. Exhibit P3 is the community certificate issued by PW.3, showing that the appellant is a Christian. The important ingredients of Section 3(1)(xi) of the Act is that the criminal act must be perpetuated with an intention that the woman is a member of the scheduled caste or scheduled tribe. None of the prosecution witnesses particularly, PWs.1 and 5 had deposed that the accused had trespassed into the house of PW.1 and assaulted her because she is a member of a scheduled caste. Only when such an act is done, with an intention of outraging her modesty or using criminal force, Section 3(1)(xi) of the Act will be attracted. In the present circumstances, there is absolutely no material to show that the

appellant had committed the criminal act alleged against him, on PW.1, with an intention that PW.1 is a scheduled caste woman, and also used force on her with an intention of dishonouring her, or outraging her modesty. Therefore, I hold that the findings of the trial court under Section 3(1)(xi) of the Act is unsustainable. Therefore, I set aside the same.

5. The final report field by PW.8 was under Sections 448 I.P.C and Section 3(1)(xi) of the Act. Section 354 I.P.C was not there. However, when the court took cognizance of the matter, it added Section 354 I.P.C along with the other offence u/s 3(1)(xi) of the Act.

6. The conviction is under Section 448 I.P.C. To prove the offence under Section 448 I.P.C, the prosecution has to establish, inter alia, that the appellant had committed the trespass in the house of PW.1, or he, after having lawfully entered, remained there unlawfully, with an intention to commit an offence, or to intimidate PW.1, insult her, or to annoy her. I have gone through the evidence of PW.1. It is her case that the appellant came to the house, enquiring for insulation tape. She was in the hall of the house. There was no door to the house. She showed

the bedroom and pointed out to the appellant that the insulation tape would be in the drawer of the bedroom. It is also the case of PW.1 that she extended her hand, pointing to the drawer that the insulation tape was inside the drawer of the table. It was then that the accused caught on her hand.

7. PW.1 deposed that the appellant had closed her mouth. At one point she deposed that the appellant had closed her month so as to prevent her from making sound. But at another point she deposed that he had closed her month thinking that she may make sound. It is also her case in Exhibit P1 F.I.S., that the appellant pushed her to the wall. But she did not depose the same while in the box. It is the further case of PW.1 that when she pushed him, he went out.

8. The prosecution has put up a case that the grandmother of PW.5, the husband of PW.1, was aged about 86, and was hard of hearing and seeing. She was sick and, therefore was lying. No one else was in the house. But PW.1 deposed that at about 10 a.m. or 11 a.m., the said grandmother walked away from the house and went to the adjacent house of great grandmother. Therefore, the evidence of PWs.1 and 5 that the

grandmother was sick and therefore, she was unable to move about, cannot be accepted. As rightly pointed out by the defence, during the trial, neither PW.7 nor PW.8 had questioned the grandmother. The proper investigation ought to have been, to question her, record her statement, cite and examine her, as a witness, in the court of law, so that the court could appreciate, whether she was really suffering from any such ailments, as had been stated by PWs.1 and 5.

9. Even according to PW.1, the appellant did not trespass into the house. He took the permission of PW.1 and she permitted him to enter into the bedroom. Therefore, the question is, after having entered, whether he unlawfully remained and committed the offence alleged, by using criminal force on PW.1. There is no evidence to show that the appellant left the work cite, as PW.6 did not support the prosecution case. But the important point which I appreciate is the evidence of PW.2, who though was hostile, had deposed that PWs.1 and 5, and the appellant had come to her house and were speaking about the some incidence which occurred involving the appellant and PW.1. The defence put forward by the appellant was that the work done by PW.5 was not

to the satisfaction of the contractor and, therefore, he was threatening PW.5 to send out of the job. There was a feeling for PWs.1 and 5 that the reason for sending him off from the job was the appellant and, hence they have falsely put forward this case. The proper person to disprove or prove this fact was the contractor Ravi. But he was not cited and examined by the defence. Therefore, I am unable to accept that contentions. Therefore, the fact remains that something had happened, involving the appellant and PW.1, that was the reason why PWs.1 and 5 went to the house of the appellant during the lunch period and, thereafter, all the three of them came to the house of PW.2 and talked about it. In such circumstances, I do not disbelieve the version of PW.1.

10. The next question is whether there was an intention to outrage the modesty of PW.1. 'Modesty' has some relation to the sense of propriety of behavior in relation to PW.1, against whom the offence is said to have been committed. The mere physical act of the appellant is insufficient to attract the intention or the ingredients of Section 354 I.P.C. But the use of the criminal force or an assault, must contain a subjective element, so far as PW.1 is concerned, against whom the force was used. In

the facts of this case, the evidence of PW.1 is not clear about the closing of her mouth. Due to the non examination of the grandmother and the other circumstances, I am of the opinion that there was no intention on the appellant to outrage the modesty of PW.1. But he intentionally used criminal force on PW.1 by catching on her hand, which she extended to point out where the drawer was, from where insulation tape could be collected by the appellant. Therefore, the offence attracted on that count is under Section 352 I.P.C for using criminal force on any person otherwise than on grave provocation given by that person. After having permitted the entry into the house of PW.1, the appellant remained there and caught hold on the hand of PW.1. He unlawfully remained in the bedroom of PW.1 and committed the offence under Section 352 I.P.C, as stated above. Hence, the ingredients of Section 448 I.P.C., as having entered unlawfully, remained back to commit an offence also comes into play. Therefore, the offence proved is under Section 448 I.P.C. as well.

11. The parties are neighbours. The occurrence took place in the year 2000. In such circumstances, sending this person to jail would be against the interest of both the parties.

12. In the result, I allow the appeal in part. The conviction of the trial court under Section 3(1)(xi) of the Act is set aside. The conviction under Section 354 I.P.C is also set aside. The conviction under Section 448 I.P.C is sustained. I also convict the appellant under Section 352 I.P.C. The sentence of simple imprisonment for one month, imposed under Section 448 I.P.C is set aside, instead, I impose a fine of rupees one thousand, under Section 448 I.P.C, in default to undergo simple imprisonment for one month. I also impose a fine of rupees five hundred under Section 352 I.P.C, in default to undergo simple imprisonment for two weeks.

The trial court shall take steps to realise the fine from the appellant, on receipt of a copy of this judgment.

(J.M.JAMES)
Judge

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J.M.JAMES, J.

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Crl.A.No.83 of 2002 (A)

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J U D G M E N T

29th March, 2007